

UNITED STATES COURT OF APPEALS

NOV 6 1997

TENTH CIRCUIT

PATRICK FISHER
Clerk

DAVID ARNOLD DEFOE,

Petitioner - Appellant,
v.

STATE OF UTAH,

Respondent - Appellee.

No. 97-4096
(D.C. No. 97-CV-130-B)
(District of Utah)

ORDER AND JUDGMENT*

Before **BALDOCK, MCKAY** and **LUCERO**, Circuit Judges.

Upon a review of the Application for Certificate of Appealability, and materials submitted by the petitioner in support thereof, it does not appear that petitioner has exhausted his state remedies. Accordingly, his Application for Certificate of Appealability is DENIED without prejudice to renewal when exhaustion has occurred in accordance with 28 U.S.C. § 2254 (b) and (c) and Picard v. Connor, 404 U.S. 270 (1971).

*The case is unanimously ordered submitted without oral argument pursuant to Fed. R. App. P. 34(a) and 10th Cir. R. 34.1.9. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Carlos F. Lucero
Circuit Judge